

REMARKS

The action rejects claim 1 for lacking utility, rejects claims 16-20 and 22-27 as anticipated by USP 5,495,412 to Thiessen/assigned to ICAN Systems), and rejects claims 1-15 and 21 under 35 U.S.C. § 103 in view of Wallman USP 6,338,047 (assigned to FOLIOfn, Inc.).

Claims 1 and 16 are amended in this response. The rejections are respectfully traversed for reasons set forth below.

It is helpful to begin with an overview.

Thiessen patented process and apparatus and the present invention are fundamentally distinct in that they support very different approaches to negotiation and decision-making. Thiessen, essentially, is one of facilitating bargaining between users in a narrow and suboptimal approach to negotiations and decision-making and the apparatus is configured for that purpose. Thiessen's apparatus serves multiple users simultaneously as a type of electronic, automated mediator that cobbles together potential agreements based on the individual positions submitted by the users.

Per Thiessen, each user (or party) submits to a central computer various information as to its position or "preference" as indicated in col. 4, (i.e. what that particular user wants or would be willing to accept) on specific issues, which are defined by the user. For example, User A might take the position that he would like to receive a payment between \$500 and \$1,000 and would like to receive the payment within three to six months. User B might take the position that she is willing to pay up to \$700 and would like to make the payment in six to twelve months. The central computer then compiles the positions of all of the users and determines possible agreement scenarios that meet some or all of the users' expressed preferences. For example, one such agreement scenario might be a \$700 payment from User B to User A in six months.

In this way, the user makes use of Thiessen's system for communicating a position or positions to the other users of Thiessen, who are parties to the negotiation, on various related issues, such as money, time frame for payment, etc. In contrast to the present invention, Thiessen does not organize, compile or make use of information for the user pertaining to the underlying interests of the user or the interests of the other parties or related stakeholders. Additionally, Thiessen does not provide the user with the

important utility of identifying and making use of the relationship between those interests. The focus of Thiessen is entirely on positions, communicated as absolutes or as acceptable ranges, taken by each particular user. As a result, Thiessen is limited to a sorting function, matching areas where there is overlap in the various positions of the users and prompting users for different positions if there is no overlap.

Fundamentally, the present invention takes an entirely different approach that does not follow from and is not derivative of Thiessen's disclosure, i.e. neither anticipated nor suggested by it (alone or with Wallman), but creates substantial and unique benefits to the user and establishes a broader application for negotiations and decision-making. As detailed below, where Thiessen ignores the value of understanding and organizing information for the user about the interests of the user and other parties, users of the present invention take account and make use of such information in important and novel ways.

Although Thiessen and the above cited action use the term "preference" to illustrate the submissions or inputs of the users of Thiessen, the submissions are more accurately described as positions, as opposed to interests. See generally, *Getting to Yes; Negotiating Agreement Without Giving In* by Roger Fisher, et al. (Penguin Books, paperback issue 1991, available via Amazon.com) By definition, positions are specific demands that a party makes in a negotiation (e.g., "pay me \$1000" or "finish the job within one week"). Positions can also be expressed as ranges of acceptable outcomes (e.g., "pay me between \$1000 and \$1500" or "finish the job within seven to ten days"). Interests are not generally defined in such absolute and specific terms, but instead describe underlying needs (e.g., "maximize the amount of money" and "receive payment as soon as possible"). The benefit to organizing information around interests is that interests can be satisfied in multiple and creative ways, unlike positions as taught in Thiessen.

Because the users are merely communicating their various positions, Thiessen facilitates what is known in the alternative dispute resolution industry and in the scholarship as ADR as positional bargaining (a.k.a. the "high-low game"). In positional bargaining, parties take positions in anticipation of and response to the positions of the other party (e.g., one party asks for a lot of money while the other party offers very little

money, hence "high-low game"). Practitioners and academics understand that a positional approach is a very limited and suboptimal negotiation method, because it fails to elicit many options for satisfying the underlying interests of the parties, including common interests the parties may share. Positional bargaining also encourages parties to game the negotiation by taking extreme positions and then scaling back their demands through successive bargaining "rounds" until a compromise is possibly achieved. As the literature makes clear, such an approach has a high likelihood of failure, often damages the relationship between the parties, and even if successful, runs a significant risk of creating an agreement that one or more parties eventually breaches.

Even more limiting, the positional approach focuses each party on its own needs and de-emphasizes the interests of other parties. The basic idea is that each party should and will negotiate in a manner that protects its own interests, rather than seeking ways to satisfy the other parties' interests. Practitioners and academics both recognize that effective use of information about the needs, possible actions and alternatives of others, including other parties and other affected stakeholders, is extremely important in negotiating and decision-making. The present invention not only captures such valuable information, but also organizes and arranges the information in useful and novel ways.

Furthermore, the positional approach, as implemented in Thiessen, is strictly a negotiation methodology that seeks negotiated agreement. Thiessen is designed entirely for multiple parties, and its outcome is entirely focused on reaching or failing to reach some acceptable agreement between the users. Thiessen thereby has limited value to individual users for decision-making other than what adjustments could be made to the user's positions and whether or not to accept the particular agreement generated by the central computer. There is no capacity, for example, in Thiessen for guiding a user's broader decision-making with respect to other alternatives to a particular settlement, such as unilaterally pursuing conflict and examining how various options might affect particular stakeholders in different ways.

By enabling users to implement an "interest-based approach" to negotiation and decision-making (as described below), the present invention provides a distinct application that is fundamentally different from what Thiessen teaches, in at least the following seven related but distinct ways:

1. Interest-based negotiation is distinct from and non-derivative of positional bargaining.

Positional bargaining as taught by Thiessen encourages parties to limit their approach to negotiation to gaming various offers and counter-offers so as to find acceptable compromises that create agreements. By contrast, interest-based negotiation focuses on the interests of each party, including the user, to find creative and expansive ways of satisfying the interests of all involved stakeholders so as to encourage agreements that optimally create value for everyone involved.

2. Effective negotiation requires an understanding of other stakeholders involved in a negotiation (besides one's self) and what those other stakeholders need.

As an introductory matter and explained in further detail below, the present invention provides unique benefits to users by capturing and organizing information about other stakeholders and their needs in a negotiation. The present invention uniquely provides a system for displaying such information to ensure that users can leverage a deeper understanding of other stakeholders' needs in the negotiation or decision-making process. Such information provides significant and novel benefits to users because stakeholders are more likely to accept a negotiation proposal that not only addresses their critical interests but also identifies how their interests will be satisfied. By contrast, Thiessen takes a more narrow approach, where each user focuses only on his own needs as he prepares his proposals.

3. Understanding the relationship between parties' interests can yield important substantive benefits in designing negotiation proposals.

Using novel, non-obvious formulas and designs, the present invention organizes information about the interests of all stakeholders involved in a negotiation, displaying the relationship between stakeholders' interests, and identifying in particular where stakeholders have interests in common and where their interests are different or opposed. This unique arrangement provides substantial benefit to users in a number of ways. First, by identifying (and highlighting) where parties have interests in common, particularly

where they have critical and important interests in common, users can more easily focus creative energy on developing multiple and more comprehensive proposed solutions that might satisfy the interests of various stakeholders on that particular issue, thereby expanding the value of the potential deal to all stakeholders with common interests on that particular issue. Second, users can use information about where stakeholders may have different interests from each other and design proposals that might include value creating trades that satisfy those divergent interests in a manner that maximizes satisfaction of some stakeholders' interests and minimizes harm to other stakeholders' interests. Without such information, parties are likely to focus entirely on their own interests and miss opportunities to build additional value in the negotiation.

4. Understanding the relationship between parties' interests can facilitate more effective communication and relationship-building in the negotiation.

The outcome of a negotiation often depends on how the parties communicate and present proposals. Users find great benefit in seeing where they have interests in common with other stakeholders so that they can focus the initial discussions and their proposals on those issues first and build momentum toward eventual agreement. Users also find great benefit when communicating in having key information organized about the interests of other stakeholders involved, particularly what interests are most important to those stakeholders, so that they can tailor their proposals and communications to address those particular interests. In addition, many negotiations are not isolated transactions between the parties, but occur in the context of ongoing discussions and with a likely impact on future negotiations and relationships. Because of this additional complexity, how proposals and other ideas are communicated between the parties affects not only the result of that particular negotiation, but also the relationship between the parties. Users find significant benefit in the ability to organize the information and present a communication "roadmap" to assist in how issues should be communicated and when they should be communicated.

5. Understanding the interests of the other parties and stakeholders can provide useful insights into a) the alternatives that those parties may seek in the event

negotiations break down and b) the likelihood that stakeholders would pursue such alternatives.

Users find additional benefit from information about what other parties might do in the event a negotiated agreement is not reached and how those alternatives might affect the interests of various stakeholders. Users can use this information to assess whether stakeholders will try to implement such alternatives as well as the likelihood that they will succeed if they do.

6. Understanding the interests and possible actions or alternatives of stakeholders who are not parties to the negotiation provides important insights.

The present invention organizes and displays information that also includes the interests, actions and alternatives of non-parties to the negotiation, such as stakeholders who may be affected by the outcome of a negotiation but are not at the negotiation table (and not users in Thiessen). Such stakeholders might include important business partners, personal relations (such as a spouse or relative) or related entities who might share in the benefit or harm from a negotiated agreement or the failure to achieve a negotiated agreement.

7. Providing a decision-making platform for single users creates benefits and value not available from or derivative of Thiessen.

Unlike Thiessen, where multiple users submit individual positions in an effort to find some common agreement, the present invention is designed for a single user as a decision-making process that focuses on all of the stakeholders involved in a negotiation and all the needs of those stakeholders.

A. Rejection of Claim 1 as lacking patentable utility

In addition to the points mentioned above, Claim 1 covers the collection and receiving of data that relates to preparing for and implementing negotiation strategies and decision-making. The above cited action states re Claim 1 contends that it lacks patentable utility because there is no tangible result, only a plan. The manner in which

the invention collects and analyzes the data, however, follows a very specific process that results in at least two tangible results.

First, the method in Claim 1 creates a structured process for the collection of specific and targeted data in a way that facilitates the discovery of as many relevant details as possible that are necessary for the negotiation. The method includes a unique and specific sequencing of particular types of questions. Those questions are presented to users in one or more formats (e.g., screen-by-screen, with displays of relevant data on each screen) that are specifically designed for a particular tangible result: namely, a full collection of information that would otherwise not be available to the user, such as a full list of parties and other stakeholders (who may be involved or affected by a negotiation but are not parties), a full list of what matters (issues) to those various stakeholders, and a full list of the interests of each stakeholder on each particular issue. As shown in claim 1 as now amended the computer implemented method includes storage and presentation (making accessible functions to enhance the analysis of problems, of getting to an accord or decision. The method has utility.

The data collection process brings significant, additional benefits to the user because it triggers and prompts – through rigorous adherence to a specific methodology for eliciting information – the core data necessary for making preparations and decisions in a negotiation. For example, in order for the user to fully understand what “issues” must be addressed in a negotiation, the user must consider not only her own perspective on the matter, but also what others involved in or affected by the negotiation may want on that particular issue. By creating an input screen that includes a highlighted list of the stakeholders involved in or affected by the negotiation, the method in Claim 1 prompts the user to generate a complete list of topics for the negotiation, with everyone’s interests in mind.

In addition, by creating identifying a vehicle (e.g., an input screen) for each stakeholder’s need on a particular issue in a way that demonstrates and elicits an understanding of the relationship between and among the interests of the various stakeholders, such as where certain stakeholders have interests in common or where their interests are opposed, the method in Claim 1 provides the user with key insights that will enhance the user’s negotiation results. In structuring an input device that automatically

triggers the input information about others involved in or affected by the negotiation and the interests of those stakeholders, the user is building necessary information through a process that will facilitate a successful implementation of interest-based approach to negotiations that yields the benefits explained above.

Second, the method in Claim 1 delivers a uniquely valuable analysis of all of the types of data collected and received from the user, establishing a process with outputs that the user can utilize to examine the important connections between individual pieces of data (for example, how various possible actions may affect the interests of another stakeholder or what combination of possible actions may have the most beneficial impact on the stakeholders as a group). This analysis function is a tangible result built from the data collection. The method provides links between the data indicating the relevant and important relationships between interests and stakeholders that users find valuable, as described in detail above.

B. Rejection of Claims 1-15, 21 as being obvious based on Thiessen and Wallman

Claim 1 (per se and as incorporated into claims 2-15)

Incorporating the discussion from above, there is a fundamental difference between Thiessen and the method in Claim 1 that relates to the type of information and how the information is collected. Thiessen receives data about stakeholders and other information relating to the negotiation in a manner that is different from the process used and types of information collected in the method in Claim 1. Thiessen receives the data in a central computer where individual users submit their own discrete positions, as described above. Thiessen does not, in contrast to the method in Claim 1, provide a process or organize the information for users to evaluate or assess the interests of others involved in the negotiation. In fact, as explained more fully above, because the positions utilized by users in Thiessen may be merely a game to try to elicit a particular response from other users, the individual user's positions in Thiessen may not even be calibrated to address the actual interests of the user.

The information collected in the method in Claim 1 is organized to show the relationship between the interests of the various stakeholders, indicating where

stakeholders have interests in common and where they have interests that are opposed. As explained above, such an interest-based approach to collecting and organizing data about stakeholders and their needs provides important insights and value to users as they craft possible proposals, develop communication plans and consider various decisions.

More specifically, while Thiessen's system receives data about stakeholders, it is only collecting information pertaining to the actual parties who are participating in that particular Thiessen session. Unlike the method in Claim 1, Thiessen provides no process to identify all of the stakeholders who are involved in or affected by the negotiation, including non-parties, such as business partners, spouses and other family members, and other important and potentially influential entities. Having such a list provides utility to users as they weigh various possible actions and decisions in light of the impact on and needs of all involved stakeholders.

Similarly, while Thiessen collects information referred to as "issues," the data collected is narrow and entirely limited to what the individual users include in their positions. As discussed above, the approach of positional bargaining limits the focus and range of the negotiation process to those single or few "issues" where the user happens to target their positions. It is a suboptimal and limited way to negotiate. By contrast, the interest-based method in Claim 1 creates an actual list that is built by the user from a process for eliciting, capturing and organizing all of the issues relevant to the user and to all of the other involved stakeholders. It provides significant benefit to the user by creating a framework for developing proposals or agreements that are broadly defined and focus on the satisfaction of interests for a variety of stakeholders.

Also, while Thiessen collects information relating to what it refers to as "preferences," this data is not the same as the interests as described in the method of Claim 1 as discussed above. The users in Thiessen are really submitting positions, not data on interests. These positions are specific demands made by Thiessen users, such as "pay me \$1000." The organization of this data by Thiessen is around finding modifications to the positions that might lead to an agreement, rather than indicating where stakeholders may have common or divergent needs as in the method in Claim 1. The method in Claim 1, by contrast, explicitly captures and organizes data about other stakeholders' interests that includes a process for understanding the relationship between

those interests. The utility to the user is that by organizing information around interests, rather than positions, the user has more flexibility and options for satisfying not only her own needs but also the needs of other stakeholders.

Furthermore, the links that Thiessen creates for users between the data lack the utility and process that is a part of the method in Claim 1. While it is true that data about the positions and stakeholders is linked in Thiessen, the connection is limited to the calculation of possible ranges of agreement given the users' collective positions. Users in Thiessen do not receive an understanding or a process for understanding the relationship between the needs of the stakeholders. They merely see and respond to positions taken by other users.

In sum, the method in Claim 1 for generating and collecting data about possible actions to reach agreement is distinct from Thiessen. While Thiessen collects limited information relating to possible actions that might form the basis of an agreement, these actions are strictly positions submitted by individual users. By contrast, the method in Claim 1 includes a specific process that links information about the interests of various stakeholders, such as what interests might matter the most to particular stakeholders and where do stakeholders have common interests to the user, to facilitate identification of optimal proposals and identify how specific actions might satisfy the interests of the user or of other stakeholders or both.

Claims 2 and 3

The additional step to the method in Claim 1 of displaying the stakeholders, issues and the stakeholders' interests on each issue ("interest chart") takes the organizing of the interest-based data and provides visual displays that users can utilize for creating proposals, developing communication plans and improving decision-making. The interest chart in Claims 2 and 3 arranges information about all of the stakeholders involved in a negotiation along one axis, and all of the issues that matter to those stakeholders along the other axis. A grid is created whereby data about what each stakeholder wants on each particular issue is entered and displayed within the two axes. The interest chart also organizes the information so that those issues where there is the most agreement among the stakeholders, particularly among the stakeholders who are

essential to an agreement, are moved to the top of the chart, and those issues where there is the most disagreement are moved to the bottom. The data is further organized through color and font coding to indicate which interests the stakeholders have in common, which interests are opposed and which interests are different, but not opposed. In addition, the data is also organized through font coding to indicate whether the interests are critical, important or not important to the particular stakeholder. As a result, the user has in one novel, valuable display, all of the information the user will likely need to create talking points and a framework for determining the optimal approach to a give negotiation.

Because of the way the information in the method in Claims 2 and 3 is organized and displayed, the user has a framework for creating proposals, considering various communication plans and making strategic decisions. The interest chart puts in order, for example, from top to bottom, which issues are going to be the easiest to discuss with the other stakeholders and may form the basis of a promising proposal, because the common interests are displayed at the top of the chart. The interest chart also indicates to the user which interests are critical to a particular stakeholder, so that the user knows which issues must be addressed with that particular stakeholder in future discussions or proposals. This type of interest-specific information, which is of great value to users, is not a part of Thiessen and does not follow from any of Thiessen's methods.

By contrast, the data arranged and displayed in figures 3 and 5 of Thiessen, stated in the above cited PTO Action as an "interest chart" in Thiessen, is limited to single users and single issues relating to the various dimensions of the user's particular position. For example, Figure 3 of Thiessen depicts the range of a particular position, in the example minimum flow for irrigation from 150 to 100, and the percentage of additional satisfaction from 0 to 100 along the other axis. The information contained within Thiessen's grid is simply how much more satisfaction that particular user will receive along various points of the range of the particular position on the issue. For example, as the irrigation flow moves from 150 down to 100, the user will experience a growing percentage of satisfaction.

Similarly, Figure 5 depicts a graphical representation of how the central computer in Thiessen computes the various positional offerings of the users to suggest a possible agreement. On one axis is the level of satisfaction for one user, based on the positions

taken by that user. The level of satisfaction for the other user is on the other axis, similarly based on the position taken by the other user. Depicted on Figure 5 are various points within the grid where an agreement might meet the general demand parameters for both users. Unlike the interest chart in the method in Claim 1, Figure 5 is not something available to Thiessen users as a tool. It is merely the calculation process employed by the central computer in Thiessen. Moreover, even if users had access to the graph, which they do not, it would not help the user understand the interests of others or the relationship of those interests to the interests of the user because the data depicted in Thiessen's Figure 5 shows users' positions, not their underlying interests. Neither Figure 3 nor Figure 5 would ever be mistaken for an interest chart as defined in Claims 2 and 3 herein, nor would it be obvious to one of ordinary skill in the art of negotiation how the data depicted in Thiessen's Figures 3 or 5 might relate to a process for understanding and displaying the key relationships between the interests of various stakeholders involved in a negotiation.

Claims 4 - 6

In addition to limitations of parent Claim 1 discussed above, the term "stakeholder" as used in the present invention has a different definition than how it is used in Thiessen. In the present invention, the term "stakeholder" includes non-parties and non-users of the system, not just the users (parties) as in Thiessen seeking to reach agreement in their negotiation.

Claim 7

In addition to limitations of parent Claim 1 discussed above, the term "issue" as defined in Thiessen is limited to the topics addressed by the actual positions taken by individual users and does not cover a potentially broader range of topics as in the present invention, including topics that might matter to non-parties and topics that might not be addressed in particular proposals or an agreement.

Claim 8

In addition to limitations of parent Claim 1 discussed above, the definition of interests as outcomes related to the particular issues is similarly novel and distinct. As described more fully above, Thiessen does not address interests *per se*, but discusses preferential outcomes and preferences, which are really positions and distinct from the definition of interests.

Claims 9, 10

In addition to limitations of parent Claim 1 discussed above, the transaction can be a negotiation or strategy planning session. Thiessen functions merely as a conduit device for filtering possible outcomes from the particular positions taken by its users, it is strictly limited in use to negotiations. The present invention relates to communication plans and broader decision-making, as explained more fully above, by helping users understand the interests of all stakeholders involved or affected, it applies to strategy planning sessions, where the outcome may be decision-making rather than a negotiated resolution.

Claim 11

Creating links further comprising the identification of the anchor stakeholder on a particular issue and the determination of all other stakeholders' interests relative to the anchor's interest on that particular issue yields important benefits for users by providing a framework for the user to understand the relationship between the interests of various stakeholders. The system utilizes the anchor stakeholder process to embed an interest-based methodology requiring the user to identify and understand the important relationships between and among the interests of the stakeholders.

The common base in Thiessen and the method in the present invention of identifying an anchor stakeholder and using the anchor to determine the interests of the other non-anchor stakeholders are two different methodologies. The common base in Thiessen could be better described as the overlap between the positions submitted by the particular users. Returning to the example from above, when User A takes the position that he would like to receive a payment between \$500 and \$1,000 and would like to receive the payment within three to six months, and User B takes the position that she is

willing to pay up to \$700 and would like to make the payment in six to twelve months, the common base is merely a calculation of where there is overlap in the submitted positions, in this example something like a \$700 payment from User B to User A in six months.

The process of Thiessen does not make it obvious to one of ordinary skill in the art of negotiation to utilize an anchor stakeholder method. The anchor stakeholder method in Claim 11 is not about finding a starting point for negotiations. It is the beginning of an understanding and identification of the interests of various stakeholders involved in or affected by the negotiation, and helps the user understand the important relationships between and among those interests.

Claim 12

Determining whether a particular action is compatible with other actions is novel and unique to the present invention. If the user selects incompatible actions for an action plan, the system will not accept both actions and will take the additional step of notifying the user as to which actions are incompatible. The system will also not include any incompatible actions within an action plan, which creates a more realistic analysis of potential plans for the purpose of decision-making. Thiessen has no similar checks on what options can be included by users and does not provide any notification to its users of the incompatibility of the various actions.

Claim 13

Determining whether the effects of a particular action is cumulative with the effects of another action is similarly novel and unique to the present invention. If two actions, for example, are not cumulative with each other, then their effects on stakeholder interests cannot be fully aggregated, an important consideration when the user is examining or assessing various combinations of actions in negotiations or decision-making. The system ensures that the proper aggregation occurs in such circumstances by counting only the most extreme effect of the non-cumulative actions to the aggregated effects of the combination of actions. As discussed with respect to Claim 12 above, Thiessen provides no system or method for accurately measuring the impact of

combinations of actions that are non-cumulative and does not notify its users if actions are non-cumulative.

Claim 14

Determining whether the effects of a particular action override the effects of another action or combination of actions under certain circumstances is similarly novel and unique to the present invention. On certain issues, a particular action might override the effects of other actions. The system ensures that the proper aggregation occurs in such circumstances by counting only the effect of the overriding action on that issue or issues. As in Claim 12 above, Thiessen provides no system or method for accurately measuring the effects of combinations of actions when there is an overriding action on particular issues and does not provide any notification to its users if the effects of a particular action override the effects of other actions.

Claim 15

Identifying additional "fighting alternatives" if there is no agreement among the stakeholders is distinct from Thiessen in many ways already described above. The method for identifying fighting alternatives is far more robust and incorporates an understanding of the interests of all of the stakeholders as a matter of process. The system identifies fighting alternatives for each individual stakeholder in a negotiation, with realistic assessments of the likelihood of those alternatives to be taken and the effect of those alternatives, if taken, on the interests of all of the stakeholders.

Such information provides utility to the user in the decision-making process of what course of action makes the most sense, in light of the effects on all stakeholders. The information created relating to the effects of various fighting alternatives on stakeholder interests is further enhanced by providing a process for the user to develop and consider targeted fighting alternatives that have specific effects on the critical interests of various stakeholders.

While Thiessen includes a process that is defined as a "BATNA analysis" (i.e. Best Alternative to a Negotiated Agreement), it is more appropriately akin to establishing a bottom line position, below which the user will not find acceptable as part of an

agreement. Unlike the present invention, Thiessen's "BATNA analysis" is not related to the interests of other stakeholders, does not take into account what other stakeholders, including non-parties, might do if there is no agreement, provides no process for assessing the likelihood of whether such alternatives – whether taken by the user or by other stakeholders – would be taken, and does not identify the effects of such alternatives on any stakeholder's interests, including the interests of the user.

Claim 21

The method in Claim 21 takes into account and organizes information pertaining to the importance of various stakeholders in the negotiation in two ways in ways not anticipated by Thiessen nor made obvious by any proper combination of Thiessen and Wallman. First, stakeholders in the present invention are identified as essential or not essential. Essential stakeholders are defined as necessary for the deal (either because they must sign the deal or because they are key decision-makers who can block a potential deal). Those stakeholders who are not essential are not necessary as signers of the deal. Second, stakeholders are placed in order of relevance and importance for display purposes, to ensure that those stakeholders of greatest relevance are placed ahead of stakeholders who are less important.

Both ways of delineating the importance of stakeholders in the present invention are useful to users for a variety of reasons. By organizing the information about a plurality of stakeholders into practical divisions – particularly which stakeholders are necessary to a deal – and displaying those stakeholders of greatest importance toward the front of the list, the method in Claim 21 helps the user focus on satisfying the interests of the most important stakeholders because their interests are more prominently displayed.

With respect to the Wallman prior art, that method teaches a system to weigh certain stakeholders as more important than others, based on their individual contributions to a mutual fund (the more money contributed the more important the stakeholder). The designation of ranking of stakeholders according to contribution does not teach the present invention's demarcating two sets of stakeholders based on their status as essential or not essential to making an agreement possible. Also, weighing certain stakeholders according to importance does not necessarily teach an ordering of

stakeholders according to their relevance in the negotiation for purpose of focusing on the interests of those more important stakeholders.

C. Rejection of Claims 16-20, 22-27 as anticipated by Thiessen

Claims 16, 22, 25, 27

Claims 16, 22, 25 and 27 collectively are wholly unique and not anticipated by Thiessen. As a general matter, these Claims cover a system for displaying and organizing information about how various actions or possible actions, which could comprise proposals or agreements, affect the interests of the various stakeholders in the negotiation. As discussed above, academics and practitioners both recognize the value and benefit of understanding how negotiation proposals and agreements affect others in the negotiation, an approach not included in or anticipated by Thiessen's individual positional bargaining approach. For example, with information about the effects of possible actions on the interests of other stakeholders, the user can include or create actions that might have little or no impact on the user's interests but could be largely beneficial to other stakeholders. These types of actions, which may have low or no cost or utility to the user may nonetheless bring significant, even breakthrough, benefits to other stakeholders in the negotiation, and may, as a result, become the difference between reaching a negotiated agreement that satisfies the user's interests and not achieving that desirable result. Discovery of such a low-cost / high-impact action is unlikely in Thiessen, because such actions would likely remain outside a proposal determined, as Thiessen does, by basing an agreement on overlapping "preferences" generated through positional bargaining focused on each user's own positions.

The action posits that Thiessen collects and utilizes information about how certain actions or combinations of actions may impact the various stakeholder interests on particular issues in the negotiation. The impact measured by Thiessen, however, is distinct from the present invention's Claims 16, 22, 25 and 27. The impact measured in Thiessen is limited to the particular user and that particular user's individual positions, so that each of the multiple users is evaluating the impact only with respect to his own unique position. Thiessen's approach does not anticipate the present invention's

collection and display on how the actions or any combination of actions might affect other stakeholders involved in or affected by the negotiation. In other words, users in Thiessen are merely assessing whether their individual positions have been met, rather than evaluating various actions or combinations of actions against the interests of all stakeholders.

Unlike the present invention, Thiessen's collection of information about the impact of various actions on stakeholder interests is limited to discrete user positions that a) are asserted by an individual user in isolation from the other parties in the negotiation and b) are focused, as discussed above, exclusively on such user's own interests. There is no mechanism in Thiessen for a user to consider or make use of information about the effects of various actions on the interests of others involved in the matter, which is highly beneficial to users of the present invention as discussed above.

Claims 17-19, 23, 24

Because the methods of Claims 16 and 22 (parents of 17-19 and 23-24, respectively) are distinct, their use where the transaction is a negotiation, mediation or strategy planning session is novel and unique to the invention. Additionally, as mentioned above, because Thiessen functions merely as a conduit device for filtering possible outcomes from the positions communicated by its users, it is strictly a negotiation and mediation system. Because the methods in Claims 16 and 22 relate to communication plans and broader decision-making derived from understanding the interests of all stakeholders involved in or affected by a situation, those Claims apply to strategy planning sessions, where the outcome may be strictly decision-making rather than a negotiated resolution.

Claim 20

The method in Claim 16 (parent of 20) further comprising the step of optimizing, includes storing importance ratings of the various interests of the stakeholders as recited specifically in claim 20 and thus is not shown by Thiessen. While users in Thiessen may express certain ratings of various issues by virtue of the positions they take, there is no explicit compiling or organizing of data related to stakeholder interests. By contrast, the

method in Claim 20 identifies each stakeholder's interest as either critical to that stakeholder, important to that stakeholder or not important to that stakeholder. This unique information about other stakeholder and which interests are most valued by them provides additional benefits to the user who utilizes the system to conduct negotiations or decision-making.

Claim 26

The method in Claim 22 (parent of 26) comprising the step of determining consequences, including whether the effects of a particular action are cumulative with the effects of another action as recited in claim 26 is novel and unique to the present invention. As discussed with respect to Claim 13, if two actions are not cumulative with each other, then their effects on stakeholder interests cannot be aggregated, an important consideration when the user is examining or assessing various combinations of actions in negotiations or decision-making. The system ensures that the proper aggregation occurs in such circumstances by counting only the most extreme effect of the non-cumulative actions in the aggregated effects of the combination of actions. As in Claim 13 above, Thiessen provides no system or method for accurately measuring the impact of combinations of actions that are non-cumulative and does not notify its users if actions are non-cumulative.


Accordingly, it is submitted that claims 1-26 as now presented present a novel, useful and unobvious invention and should be allowed.

If any questions remain, please call Applicant's attorney at the number given above. If any sums are owed, please charge deposit account 03-2410, a duplicate copy of this page is enclosed for Accounting Branch purposes. Also enclosed is a copy of Notice of Customer Number Record Change mailed July 24, 2006.

Respectfully submitted,

Dated: October 31, 2006

By:


Jerry Cohen
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Enclosure: copy of Notice of Customer Number Record Change

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